

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

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To: The Commission

**OPPOSITION OF
ADVANCED MOBILECOMM PCS, INC.**

Advanced MobileComm PCS, Inc. ("AMP"), pursuant to Section 1.429(f) of the Federal Communications Commission ("Commission" or "FCC") and by counsel, hereby submits its Opposition to the Petition for Reconsideration ("Petition") on the Order on Reconsideration ("Order") in the above-styled proceeding¹ filed by the Association of Independent Designated Entities ("AIDE").² AIDE requests that the Commission reconsider its action in the Order in which the Commission modified the broadband Personal Communications Service rules to allow passive investors in entrepreneurs' block applicants ("Applicant") to acquire 15% of the voting stock of the Applicant, whether such Applicant is a privately or publicly traded company, without triggering the attribution rules. AMP opposes this Petition and requests the Commission dismiss it. The Commission was correct in expanding the exception to

¹ Order on Reconsideration (FCC 94-217), PP Docket No. 93-253, 59 FR 43062 (August 22, 1994).

² Public Notice (DA 94-1068), Petitions for Reconsideration of Order on Reconsideration, 59 FR 51197 (October 7, 1994). The Public Notice reduced the period typically provided under Rule Section 1.429(f) from fifteen days to ten days to file an Opposition to the Petition.

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the attribution rules connected with the Applicants to include privately held corporations.

AMP is a subsidiary of Advanced MobileComm, Inc. ("AMI"). AMI is a part of Fidelity Capital, the new-business development unit of Fidelity Investments, the nation's largest mutual fund manager with over \$250 billion in assets under management. AMP has been formed to conduct PCS operations in the United States. Fidelity Capital, through AMP and its other affiliates, anticipates that it will provide equity capital to entrepreneurs' block applicants. Fidelity Capital, through its other ventures in the telecommunications area, has been instrumental in developing and implementing competitive new businesses in the wireless mobile communications services. Fidelity Capital's entry into the PCS industry should ensure that the Commission's goal to promote the entry of the Designated Entities, as defined in Section 1.2110 of the Commission's rules, is fostered.

Prior to the Commission's action in the Order, the gross revenues, total assets and personal net worth of persons which could not qualify to bid in the entrepreneurs' block but which wished to invest in entrepreneurs' block applicants, would not be attributed to such Applicant, or "passive investor". The passive investor, for privately held corporation, was defined as a person that held no more than 25% of the passive equity of the applicant. See 47 C.F.R. § 24.709(b)(4)(i). Passive equity was defined for corporations, non-voting stock or stock that includes no more than five percent of the voting equity. See 47 C.F.R. § 24.720(j). However, Applicants which were publicly traded corporations were provided a broader exception from the attribution

rules. These persons could own up to 25% of the applicant's total equity, which could include not more than 15% of the voting stock. See 47 C.F.R. § 24.709(b)(4)(iii).

The Commission, on its own motion, determined that it should broaden the exception previously granted to publicly traded corporations to all corporations. Accordingly, it eliminated Rule Section 24.709(b)(4)(iii) and revised the definition of "passive equity" in Rule Section 24.720(e). These modifications increased the voting stock a person could hold in a corporate Applicant without triggering the attribution rules. The Commission found that the modification to the attribution rule was necessary to encourage passive investment in entrepreneurs' block applicants which is critical to the successful development of these smaller companies. The Commission further found that the increase in voting control would not provide a controlling interest by any passive investor but would diminish the substantial risk associated with committing funds to a PCS applicant and enhance the potential rewards for providing start-up capital to these new ventures.

AIDE's attacks the Commission's decision on the basis that the Commission exceeded its authority in increasing the amount of passive equity a large business may hold in an Applicant. AIDE is concerned that the increase in voting control in a privately held corporation will be ripe for abuse and the creation of "sham" Designated Entities.

AMP strongly disagrees with AIDE's argument. Under the rules, the total amount of voting control that a passive investor may obtain is 15%. Such voting

interest is certainly not controlling. Should an entrepreneurs' block applicant have three large businesses as investors, the amount of voting control the three businesses could amass is 45% -- far less than a controlling interest. When only one large business has invested in an Applicant, the voting interest is the maximum of 15%. Voting control of the corporation, whether private or public, remains in the person(s) which qualified for the entrepreneurs' block.

The amount of equity that a person not qualified for the entrepreneurs' block may hold in an Applicant has not changed. Therefore, the money that a party may invest in an Applicant has not necessarily changed. Thus, if there were a likelihood of abuse, i.e., "he who has the gold rules" as submitted by AIDE, such abuse would be able to occur whether the investor held 5% or 15% of the voting stock. AIDE's premise, therefore, does not support its contentions.

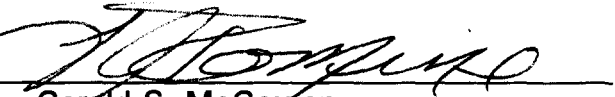
AMP fully supports the Commission modifications to the attribution rules for investors in entrepreneurs' block applicants. Broadband PCS is a capital-intensive spectrum-based service. The Commission's modification to the attribution rules provides an equitable balance between the need of the Applicant to maintain control of the license while permitting the investor to protect its investment. Contrary to AIDE's assertions, the increase in passive equity allowed by larger businesses will be extremely beneficial to the entrepreneurs' block applicant. The ability to have more active voice in the strategic decision of the applicant will allow the applicant to attract more equity financing. With better capitalized entrepreneurs' block applicant, it is more likely that such Applicants will be able to successfully develop their PCS system

and reap the financial rewards of their efforts. Failure to provide incentives to investors in this capital-intensive service could substantially increase the default rate in payment for the license and impede successful development of the PCS services and the new businesses.

For the reasons set forth above, AMP respectfully requests that the Commission dismiss the Petition for Reconsideration filed by AIDE.

Respectfully submitted,

ADVANCED MOBILECOMM PCS, INC.

By: 
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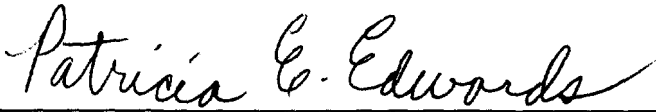
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Date: October 17, 1994

CERTIFICATE OF SERVICE

I, Patricia E. Edwards, a secretary with the law firm of Lukas McGowan Nace & Gutierrez, Chartered, do hereby certify that on October 17, 1994, I forwarded by first-class mail, postage pre-paid a copy of the foregoing Opposition to:

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Patricia E. Edwards